

Lahontan Regional Water Quality Control Board

December 4, 2014

File: 401 WQC General

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**COMMENTS ON THE DRAFT BANK ENABLING INSTRUMENT, PETERSEN RANCH
MITIGATION BANK, LOS ANGELES COUNTY**

California Regional Water Quality Control Board, Lahontan Region (Water Board) staff has reviewed the draft Bank Enabling Instrument (BEI) for the Petersen Ranch Mitigation Bank in Los Angeles County. The Lahontan Water Board is part of the Interagency Review Team (IRT) and is participating as a Signatory Agency to the proposed Bank. Our overarching comment on the BEI is that the document is inconsistent in separating out the jurisdiction of the Lahontan Water Board from that of the United States Army Corps of Engineers (USACE) and the California Department of Fish and Wildlife (CDFW). Our comments below are intended to better differentiate between these overlapping jurisdictions.

General Comments

1. The Lahontan Water Board would only utilize this Bank for compensatory mitigation related to dredge and/or fill projects authorized under Porter-Cologne Water Quality Control Act (Porter-Cologne). Therefore, because there is no need for mitigation related to Clean Water Act section 401 certification, all reference to "section 401" will need to be scrubbed from the document. However, if the Los Angeles Water Board intends to utilize this Bank for mitigation related to 401 certification, then the Los Angeles Water Board will also need to be a Signatory Agency (see BEI section VIII.B.7). In that instance, the document will need to be revised to be clear that there are two regional boards, and that the Lahontan Water Board will only utilize the Bank for projects authorized under Porter-Cologne.
2. The first paragraph on page 1 defines the "California Regional Water Quality Control Board, Region 6v" as the "Lahontan Regional Water Board," yet throughout the BEI the agency is referred to as "RWQCB." Additionally, using the more generic "RWQCB" might erroneously infer both the Lahontan and Los Angeles Regional Water Boards are Signatory Agencies. For specificity, we request that the BEI make reference to either "Lahontan Water Board" or

"Lahontan RWQCB," and, where appropriate, make reference to either "Los Angeles Water Board" or "Los Angeles RWQCB."

3. Reference to "Waters of the State" varies throughout the BEI and exhibit documents. For consistency, we request a global change to "Waters of the State" throughout the BEI and exhibits.

Bank Enabling Instrument

1. Section I.A – In the last sentence, insert "Waters of the State" after "Waters of the U.S."
2. Section II, Definitions – The definition for "Waters of the State" included on page 8 is inclusive of the Fish and Game Code and excludes the definition per Porter-Cologne. Under Porter-Cologne, "Waters of the State" are defined as "any surface water or groundwater, including saline waters, within the boundaries of the state." We request this definition be included in Section II of the BEI.
3. Section VII.B – In this section, change all "CDFW/RWQCB" to "CDFW and Lahontan RWQCB."
4. Section VII.B.3 – Insert "and the Lahontan RWQCB" behind CDFW.
5. Section VII.B.4 – Insert "and the Lahontan RWQCB" behind CDFW.
6. Section VIII.B.3 – Insert "Waters of the State" after "Waters of the U.S."
7. Section VIII.E.1 – Insert "and the Lahontan RWQCB" behind CDFW in paragraphs a(1) and a(1)(b) on page 21.
8. Section XI, Responsibilities of the Signatory Agencies – The obligations of the Signatory Agencies in this section are vague and should be more clearly spelled out so that each agency understands their role and responsibilities.
9. Section XII.C – Please address the following question: "What reasonable assurances will be in place to prohibit the Bank Sponsor and/or Property Owner from divesting and simply walking away from the Bank?"
10. Section XII.K – Change the California Regional Water Quality Control Board, Lahontan Region noticing address to the following:

California Regional Water Quality Control Board
Lahontan Region
14440 Civic Drive, Suite 200
Victorville, CA 92392
Attn: Executive Officer

11. Section XIII, Execution – Change the signatory title for the California Regional Water Quality Control Board, Lahontan Region to “Patty Z. Kouyoumdjian, Executive Officer.”
12. We recommend adding a paragraph to either Section XI or Section XII (or another more appropriate section) that specifies that the use of the Bank to satisfy compensatory mitigation requirements of USACE, Lahontan RWQCB, and CDFW permits is at the sole discretion of the respective permitting agency.

Exhibit B-2, Narrative Description of the Bank’s Service Areas

13. Section 2.2, page 13 – In the first paragraph under the heading Tertiary Service Area, please change “1600 credits” to read “Porter-Cologne credits.”

Exhibit C-1, Development Plan

14. Section 1.0, Goals – For goal 5(f), add “dredge and/or fill” before “activities.”
15. Section 4.1, Summary of Proposed Credit Types – This section is missing a discussion of Porter-Cologne credits. Please add a discussion of these credit types as depicted on Figure 4i. Also, include a table that tabulates the potential Porter-Cologne credits available by credit type and Bank Property similar to Tables 2 and 3.
16. Specific credit types are described in sections 4.2 through 4.9. For each type, the credits are identified as satisfying either 404, 401, or 1600 requirements, but there is no reference to Porter-Cologne. In these sections, please identify which credit types also satisfy Porter-Cologne requirements.

Exhibit D-3, Endowment Funding Agreement

17. Section 11, Notice – Please change the RWQCB noticing agency and address to the following:

California Regional Water Quality Control Board
Lahontan Region
14440 Civic Drive, Suite 200
Victorville, CA 92392
Attn: Executive Officer

Exhibit D-5, Long-Term Management Plan


18. Section 8.4, Notices – Please change the California Regional Water Quality Control Board, Lahontan Region noticing address to the following:

California Regional Water Quality Control Board
Lahontan Region
14440 Civic Drive, Suite 200
Victorville, CA 92392
Attn: Executive Officer

Exhibit F-1, Credit Evaluation

19. Section 2.3, RWQCB Credits – In the second to the last sentence, please add “as outlined in the Development Plan (Exhibit C-1 of the BEI)” after “buffer.”

We appreciate the opportunity to participate in the IRT. Please share our comments with the Bank Sponsor and other IRT members. If you have any questions regarding this letter, please contact me at (760) 241-7376 or jzimmerman@waterboards.ca.gov or Patrice Copeland, Senior Engineering Geologist, at (760) 241-7404 or pcopeland@waterboards.ca.gov.


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Engineering Geologist

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Kimberly Niemeyer, State Water Board (Kim.Niemeyer@waterboards.ca.gov)
LB Nye, Los Angeles Water Board (LB.Nye@waterboards.ca.gov)

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